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9 Michael Lacey

10 UNITED STATES DISTRICT COURT
11 FOR THE CENTRAL DISTRICT OF CALIFORNIA
12 WESTERN DIVISION

13 **In the Matter of the Seizure of:**

14 Any and all funds held in Republic Bank
15 of Arizona Account(s) xxxx1889,
16 xxxx2592, xxxx1938, xxxx2912, and
17 xxxx2500.

CASE NO.2:18-cv-6742-RGK (MAAx)
18-MJ-00722-PJW

[Related to Case Nos. 18-MJ-00712,
18-MJ-00713, 18-MJ-00715,
18-MJ-00716, 18-MJ-00718,
18-MJ-00719, 18-MJ-00720,
18-MJ-00721, 18-MJ-00723,
18-MJ-00724, 18-MJ-00751,
18-MJ-00797, 18-MJ-00798,
18-MJ-00996, 18-MJ-00997,
18-MJ-01427, and 18-MJ-1863]

18 DECLARATION OF PAUL J.
19 CAMBRIA, JR. IN SUPPORT OF
20 CLAIMANT MICHAEL LACEY'S
21 MOTION FOR RELEASE OF CERTAIN
22 UNTAINTED FUNDS

23 (First request)
24 (Oral Argument Requested)

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DECLARATION OF PAUL J.
CAMBRIA, JR. IN SUPPORT OF
CLAIMANT MICHAEL LACEY'S
MOTION FOR RELEASE OF CERTAIN
UNTAINTED FUNDS

(First request)
(Oral Argument Requested)

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FILED

1 I, PAUL J. CAMBRIA, JR., declare:

2 1. I am an attorney at law duly licensed to practice before all courts within
3 the State of California, am a Senior Partner at the firm Lipsitz, Green, Scime,
4 Cambria LLP, and am counsel of record for claimant Michael Lacey in this case. As
5 such, I have personal knowledge of the facts set forth below and if called as a
6 witness, I could and would competently testify to them.

7
8 2. On March 28, 2018, a grand jury sitting in the District of Arizona issued
9 an indictment ("Indictment") against Mr. Lacey and his co-defendants in the case
10 captioned *United States v. Lacey*, 18-CR-00422-PHX-SPL (BSB) ("Arizona
11 Prosecution"). (A true and correct copy of the Indictment is attached hereto as
12 Exhibit A.) The Indictment seeks to hold Mr. Lacey accountable for content posted
13 to the website www.backpage.com ("Backpage") by third-party users, based on his
14 former involvement with Backpage.

15 3. The Indictment lists a number of bank accounts with Republic Bank as
16 potentially subject to forfeiture. However, none of Mr. Lacey's bank accounts with
17 Republic Bank were identified.

18 4. It is now known that, in connection with the Arizona Prosecution, the
19 government sought and obtained seizure warrants from this Court authorizing the
20 government to restrain Mr. Lacey's monetary resources long before the scheduled
21 commencement of the January 2020 trial in the Arizona Prosecution.

22 5. On March 28, 2018, the government obtained a seizure warrant
23 authorizing it to seize the contents of certain bank accounts of Mr. Lacey's under a
24 separate miscellaneous docket and those accounts are not the subject of the instant
25 motion.

26 6. Then, on April 26, 2018, the government obtained a seizure warrant to
27 seize an additional nine accounts held with Republic Bank.

28

1 7. Three of Mr. Lacey's seized accounts—accounts with Republic Bank
2 of Arizona ending in 2485, 1897, and 3126—are the subject of the instant motion.

3 8. The release of funds to Mr. Lacey, that are unrelated to Backpage, even
4 under the government's theory of this case, is critical to his ability to meet his daily
5 financial obligations and to defend against the charges pending against him in the
6 Arizona Prosecution.

7 9. Consequently, I began requesting any and all seizure warrants, warrant
8 applications, and forfeiture orders in the beginning of May.

9 10. However, the government declined to provide any information, stating
10 that all of the forfeiture documents were subject to sealing orders.

11 11. In light of Mr. Lacey's tenuous financial position, and that the seized
12 assets included assets unrelated to Backpage, as well as assets derived from Mr.
13 Lacey's participation in First Amendment activities, defense counsel renewed its
14 request that the government promptly disclose the seizure warrants, warrant
15 applications, and forfeiture orders filed and issued in this District to enable defense
16 counsel to review the validity of the government's vast and onerous seizures.

17 12. The government declined, stating that those documents remained subject
18 to a sealing order.

19 13. After additional discussion and repeated requests that the government
20 provide the Defendants with details about the seizure actions filed in this District, the
21 government stated that it would be unable to disclose those documents to defense
22 counsel before the end of May.

23 14. On May 11, 2018, Mr. Lacey and his co-defendants moved for disclosure
24 of those documents in the District of Arizona (because the docket numbers of the
25 forfeiture actions pending in this District were unknown to them). (A true and correct
26 copy of Mr. Lacey's Motion for Disclosure is attached hereto as Exhibit B.)
27
28

1 15. Due to Mr. Lacey's mounting bills, the motion included a request for an
2 accelerated hearing of the motion. (*See id.*)

3 16. On May 18, 2018, the date that the government's opposition to the motion
4 for disclosure was due, the government began disclosure of the requested documents.
5 Notably, this disclosure occurred thirteen days earlier than the date the government
6 claimed it would be able to provide those documents to defense counsel.

7 17. As indicated in greater detail in Ms. Henze Cook's declaration, the
8 government's disclosures were telling. It was clear that the government could have
9 provided the documents to defense counsel earlier than it had stated and that the
10 government had benefited from keeping defendants in the dark.

11 18. Defense counsel's request for release of the untainted funds at issue in
12 this motion has fared no better. Ms. Henze Cook provided the government with
13 documentation of the clerical error and a declaration from Michele McSherry, the
14 Office Manager for Cereus Properties LLC, who inadvertently made the accounting
15 error, which was contrary to Mr. Lacey's instructions.

16 19. I have offered the government the opportunity to interview Ms.
17 McSherry.

18 20. The government has made no known attempts to contact Ms. McSherry.

19 21. The government has been unable or unwilling to commit to a date to
20 complete its investigation of the untainted funds even though as early as May 18, 2018,
21 I indicated, via email, that I would file the instant motion to seek release of these funds,
22 if the government was unable to identify a date by which its investigation would be
23 completed.

24 22. More recently, the government indicated that it will not take any action
25 on resolution of this issue outside the context of a civil forfeiture action (which it has
26 not pursued) with civil discovery.

27

28

1 23. Then, on July 25, 2018, a grand jury sitting in the District of Arizona
2 issued a superseding indictment. (A true and correct copy of the Superseding
3 Indictment is attached hereto as Ex. C.) The parties have had no further
4 communications about the government's erroneous seizure.

5 24. At this point, the parties have reached an impasse on this issue, and due
6 to the hardship that Mr. Lacey experiences each day that he is denied access to the
7 funds at issue, Mr. Lacey files the instant motion.

8
9 I declare, under penalty of perjury under the laws of the State of California, that
10 the foregoing is true and correct of my own knowledge, and that this declaration is
11 executed on August 10, 2018, at Buffalo, New York.

12
13 Respectfully submitted,

14
15 /s/ Paul J. Cambria, Jr.

16 LIPSITZ GREEN SCIME CAMBRIA LLP

17 Attorneys for Defendant Michael Lacey
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EXHIBIT A

Case 2:18-cr-00422-SPL Document 3 Filed 03/28/18

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MAR 28 2018	
CLERK U.S. DISTRICT COURT DISTRICT OF ARIZONA	
BY <i>Kear</i> M. DEPUTY	

SEALED

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

United States of America,

Plaintiff,

v.

1. Michael Lacey
Counts 1-70, 81, 83-84, 86, 88-92

2. James Larkin
Counts 1-68, 80, 87

3. Scott Spear
Counts 1-68, 71-78, 85, 93

4. John "Jed" Brunst
Counts 52-70, 78-84, 86-93

5. Dan Hyer
Counts 1-68

6. Andrew Padilla
Counts 1-51

7. Joye Vaught
Counts 1-51

Defendants.

CR-18-00422-PHX-SPL (BSB)

INDICTMENT

VIO: 18 U.S.C. § 371
(Conspiracy)
Count 1

18 U.S.C. § 1952(a)(3)(A)
(Travel Act—Facilitate Prostitution)
Counts 2-51

18 U.S.C. § 1956(h)
(Conspiracy to Commit Money
Laundering)
Count 52

18 U.S.C. § 1956(a)(1)(B)(i)
(Concealment Money Laundering)
Counts 53-62

18 U.S.C. § 1956(a)(2)(A)
(International Promotional Money
Laundering)
Counts 63-68

18 U.S.C. § 1957(a)
(Transactional Money Laundering)
Counts 69-93

18 U.S.C. §§ 981, 982
21 U.S.C. § 853, 28 U.S.C. § 2461
(Forfeiture Allegations)

THE GRAND JURY CHARGES:

A. Introduction

1. The website www.backpage.com ("Backpage") is notorious for being the

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1 internet's leading source of prostitution advertisements. Backpage derives the
2 overwhelming majority of its revenue from such ads. These practices have enabled
3 Backpage to earn over \$500 million in prostitution-related revenue since its inception.

4 2. Backpage was created in 2004 by defendant MICHAEL LACEY
5 ("LACEY"), defendant JAMES LARKIN ("LARKIN"), and a third individual, C.F. From
6 2004-15, LACEY and LARKIN oversaw the website's policies and strategic direction.
7 Additionally, LACEY and LARKIN have retained significant control over the website (and
8 have continued receiving tens of millions of dollars of Backpage-related distributions)
9 since purportedly selling their interests in Backpage in 2015.

10 3. Defendant SCOTT SPEAR served as the Executive Vice President of one of
11 Backpage's parent companies and held, at times, an ownership interest in Backpage of
12 approximately 4%.

13 4. Defendant JOHN "JED" BRUNST ("BRUNST") served as the Chief
14 Financial Officer of Backpage and several of Backpage's parent companies and held, at
15 times, an ownership interest in Backpage of approximately 6%.

16 5. Defendant DAN HYER ("HYER") joined Backpage's marketing department
17 in or around 2006 and served as Backpage's Sales and Marketing Director.

18 6. Defendant ANDREW PADILLA ("PADILLA") served as Backpage's
19 Operations Manager.

20 7. Defendant JOYE VAUGHT ("VAUGHT") served as Backpage's assistant
21 Operations Manager.

22 8. The defendants identified above are referred to at times in this indictment as
23 the "BACKPAGE DEFENDANTS."

24 9. As explained in detail below, the BACKPAGE DEFENDANTS have utilized
25 a variety of strategies to make it appear that the prostitution ads appearing on Backpage
26 are actually ads for "escort" services, "adult" companionship, dating, or other lawful
27 activities. For example, Backpage purports to bar customers from offering illegal services
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1 and has periodically used computerized filters and human “moderators” to edit the wording
2 of (or block) ads that explicitly offer sexual services in return for money.

3 10. These strategies are a fiction designed to conceal the true nature of
4 Backpage’s ads and customers. Indeed, the BACKPAGE DEFENDANTS have
5 admitted—in internal company documents and during private meetings—that they know
6 the overwhelming majority of the website’s ads involve prostitution. In one internal
7 document, LACEY actually bragged about the company’s contributions to the prostitution
8 industry: “Backpage is part of the solution. Eliminating adult advertising will in no way
9 eliminate or even reduce the incidence of prostitution in this country. . . . For the very first
10 time, the oldest profession in the world has transparency, record keeping and safeguards.”

11 11. Notwithstanding these private admissions, the BACKPAGE
12 DEFENDANTS have taken pains to mislead the public, regulators, and law enforcement
13 officials concerning the supposed sincerity of Backpage’s efforts to prevent the publication
14 of prostitution-related ads. For example, after reviewing LACEY’s written description of
15 Backpage’s contributions to the prostitution industry and editing practices, LARKIN
16 instructed C.F. to prevent “any of the information in this being made public.” PADILLA,
17 who helped supervise Backpage’s moderators, threatened to fire any employee who
18 acknowledged in writing that the “escorts” depicted in the website’s ads were actually
19 prostitutes: “Leaving notes . . . implying that we’re aware of prostitution . . . is enough to
20 lose your job over.” And in one internal document, Backpage’s media strategy was
21 described simply as “Do not acknowledge the prostitution.”

22 12. Many of the ads published on Backpage depicted children who were victims
23 of sex trafficking. Once again, although Backpage has sought to create the perception that
24 it diligently attempts to prevent the publication of such ads, the reality is that Backpage has
25 allowed such ads to be published while declining—for financial reasons—to take necessary
26 steps to address the problem. For example, for several years, Backpage’s official policy,
27 when presented with an ad featuring the prostitution of a child, was to delete the particular
28

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1 words in the ad denoting the child's age and then publish a revised version of the ad. Such
2 editing, of course, did nothing to change the fact the ad featured the prostitution of a child—
3 it only created a veneer of deniability and helped Backpage's customers (*i.e.*, pimps
4 trafficking children) evade detection.

5 13. Backpage has also contributed to the proliferation of ads featuring the
6 prostitution of children in other ways. For example, an anti-sex trafficking organization
7 once suggested that Backpage provide an automatic warning message whenever a customer
8 searched for particular terms indicative of the prostitution of a child. In response, C.F.
9 acknowledged the proposal was a good one but declined to adopt it because Backpage
10 would not derive any public-relations benefit from doing so: "This is a good idea but it is
11 not visible to AGs [state attorneys general] so it has little PR value. It is a low priority."
12 Backpage has also claimed it does everything in its power to alert the National Center for
13 Missing and Exploited Children ("NCMEC") whenever it becomes aware that a child is
14 being advertised on its website. However, the BACKPAGE DEFENDANTS implemented
15 policies to artificially limit such referrals. In one email, PADILLA instructed VAUGHT
16 that "if we don't want to blow past 500 [referrals to NMCEC] this month, we shouldn't be
17 doing more than 16 per day." In another training document, moderators were instructed
18 not to send emergency alerts to NCMEC in response to complaints filed by the
19 grandparents and other extended family members of children being advertised on the
20 website: "Neice [sic], nephew, grandchild, cousin, etc. doesn't count."

21 14. Virtually every dollar flowing into Backpage's coffers represents the
22 proceeds of illegal activity. In fact, by 2015, the major credit card companies stopped
23 processing payments for Backpage and some banks closed Backpage's accounts out of
24 concern they were being used for illegal purposes. In response, the BACKPAGE
25 DEFENDANTS have pursued an array of money laundering strategies. These strategies
26 have included (a) instructing customers to send checks and money orders to particular Post
27 Office box, depositing those payments in bank accounts held in the name of entities with
28

1 no apparent connection to Backpage, and then giving customers a corresponding “credit”
2 on Backpage to purchase new ads, (b) wiring the proceeds of Backpage’s business to bank
3 accounts held in foreign countries and then redistributing the funds to certain BACKPAGE
4 DEFENDANTS (as compensation) or redepositing the funds in bank accounts held in the
5 United States (to conceal the nature of those funds and promote Backpage’s ongoing
6 operations), and (c) converting customer payments, and the proceeds of Backpage’s
7 business, into and out of cryptocurrency.

8 15. The BACKPAGE DEFENDANTS have also engaged in other financial
9 transactions designed to conceal their misconduct and evade seizure by law enforcement.
10 For example, in November 2016, LACEY asked employees of an Arizona-based bank for
11 advice on how to move his assets “offshore” to protect them from seizure by the
12 government. Soon afterward, \$16.5 million in Backpage-derived cash was wired from
13 LACEY’s bank accounts in the United States to an overseas bank account in Hungary.

14 16. For all of these reasons, the BACKPAGE DEFENDANTS are charged in this
15 indictment with the crimes of facilitating prostitution (18 U.S.C. § 1952), concealment,
16 transactional, and international promotional money laundering (18 U.S.C. §§ 1956 and
17 1957), and/or conspiracy to commit these offenses (18 U.S.C. § 371 and 1956).

18 B. Backpage’s Origins, Ownership, and Control

19 17. LACEY and LARKIN are the founders of the *Phoenix New Times*, an
20 alternative newspaper based in Arizona. Over time, LACEY and LARKIN acquired
21 several other alternative newspapers, which they came to operate through an entity called
22 Village Voice Media Holdings (“VVMH”). Additionally, SPEAR served as VVMH’s
23 Executive Vice President and BRUNST served as VVMH’s Chief Financial Officer.

24 18. The publications within the VVMH newspaper chain routinely featured
25 illegal prostitution ads. In fact, more than 30 years ago, a federal court affirmed the
26 conviction of the operator of a prostitution business (which masqueraded as a massage
27 parlor) for publishing ads in the classified section of the *Village Voice*. See *United States*
28

1 *v. Sigalow*, 812 F.2d 783 (2d Cir. 1987). The conviction was for violating 18 U.S.C.
2 § 1952, one of the same crimes charged in this indictment.

3 19. By 2000, the rise of the internet—and, in particular, the website
4 www.craigslist.com (“Craigslist”), which offered free classified ads—began to
5 significantly disrupt VVMH’s business model, which depended on classified advertising
6 revenue for survival.

7 20. LACEY and LARKIN, with assistance from C.F., sought to address this
8 threat by creating Backpage. Their decision to create Backpage was later described in an
9 internal company document as follows: “In 2004, in response to the Craigslist threat that
10 was decimating daily newspapers, VVM launched its own online classified site,
11 Backpage.com, named after the back page of VVM’s print publication.”

12 21. During its first few years of operation, Backpage accounted for only a
13 fraction of VVMH’s overall revenue. In January 2006, for example, VVMH estimated that
14 Backpage supplied only 1% of its overall advertising revenue but also noted that Backpage
15 had “tremendous upside potential.”

16 22. This prediction proved prophetic. By 2008, Backpage was generating over
17 \$5 million in annual profit. This annual profit figure increased to over \$10 million in 2009.

18 23. In 2010, Craigslist chose to shut down its “adult” section due to the prevalence
19 of ads for prostitution and other illegal services. The BACKPAGE DEFENDANTS,
20 sensing an opportunity, made an aggressive push for Backpage to capture Craigslist’s share
21 of this market. In one internal document, LARKIN commented: “Craigslist has folded . .
22 . . It is possible that this will mean a deluge of adult content ads for backpage.com . . .
23 We have with the Village Voice probably the longest run of adult content advertising in
24 the US and it is, like it or not, in our DNA.”

25 24. This push was successful. In internal documents, Backpage stated that it
26 experienced “explosive growth” by “capitalizing on displaced Craigslist ad volume.”
27 Backpage’s annual profits grew to over \$26 million in 2010, over \$52 million in 2011, and
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1 over \$78 million in 2012.

2 25. These figures dwarfed the profits that VVMH's print publications were
3 generating. In fact, Backpage became so profitable that the BACKPAGE DEFENDANTS
4 decided to get rid of VVMH's publishing business so they could focus on Backpage's
5 further development and expansion. Accordingly, in or around November 2012, the
6 BACKPAGE DEFENDANTS spun off VVMH's print publications and began utilizing
7 several new corporate entities, including Medalist Holdings, Inc. ("Medalist"), Dartmoor
8 Holdings LLC ("Dartmoor"), and Camarillo Holdings, LLC ("Camarillo"), to serve as
9 Backpage's parent companies.

10 26. Following these transactions, LACEY held an ownership interest in Medalist
11 (and, therefore, in Backpage) of approximately 45%, LARKIN held an ownership interest
12 of approximately 43%, BRUNST held an ownership interest of approximately 6%, and
13 SPEAR held an ownership interest of approximately 4%.

14 27. Backpage's annual profits continued to skyrocket during and after these
15 changes. They grew to over \$112 million in 2013 and over \$134 million in 2014.

16 28. In or around April 2015, LACEY, LARKIN, SPEAR, and BRUNST
17 purported to sell their ownership interests in Backpage and several related entities for
18 around \$600 million to various Dutch entities. These Dutch entities included Atlantische
19 Bedrijven, C.V., which agreed to purchase Backpage's U.S. operations for around \$526
20 million, and UGC Tech Group C.V., which agreed to purchase Backpage's overseas
21 operations for around \$77 million.

22 29. In fact, these Dutch entities were controlled by C.F., who borrowed most of
23 the \$600 million from entities controlled by the sellers to finance the purchase. Due to this
24 financial arrangement, LACEY, LARKIN, SPEAR, and BRUNST retained a significant
25 financial interest in Backpage after the transactions were completed.

26 30. Additionally, LACEY, LARKIN, SPEAR, and BRUNST retained significant
27 operational control over Backpage following these transactions. For example, the April
28

1 2015 loan agreement required C.F. to sign a six-year employment agreement, required C.F.
2 to provide the lenders with full access to Backpage's books and records, required C.F. to
3 provide the lenders with an annual listing of all of C.F.'s personal assets, and prohibited
4 C.F. from opening any new bank accounts on Backpage's behalf without the lenders'
5 consent.

6 C. Backpage's Knowledge And Facilitation Of Prostitution Ads

7 31. By 2008, if not earlier, the BACKPAGE DEFENDANTS were aware that
8 the overwhelming majority of the website's "adult" ads involved prostitution.
9 Nevertheless, the BACKPAGE DEFENDANTS made a financial decision to continue
10 displaying those ads.

11 32. The BACKPAGE DEFENDANTS also sought to sanitize the ads by editing
12 them—that is, by removing terms and pictures that were particularly indicative of
13 prostitution and then publishing a revised version of the ad. This process was sometimes
14 referred to as "moderation."

15 33. For example, in April 2008, C.F. wrote an email explaining that, although he
16 was "under pressure to clean up phoenix's adult content," he was unwilling to delete
17 prostitution ads because doing so "would put us in a very uncompetitive position with
18 craig[slist]" and result in "lost pageviews and revenue." Thus, he instructed Backpage's
19 technical staff to edit the wording of such ads, by removing particular terms that were
20 indicative of prostitution, and then allow the remainder of the ad to be featured on
21 Backpage's website.

22 34. On February 26, 2009, C.F. received an email from the classified-ads
23 manager of a newspaper within the VVMH chain asking why Backpage's terms of service
24 purported to prevent customers from "suggest[ing] an exchange of sexual favors for
25 money" in light of the fact that "[c]learly everyone on the entire backpage network breaks
26 the rules." In response, C.F. didn't dispute the author's characterization and explained that
27 Backpage had simply added the terms of service at the behest of "our attorney in SF" in an
28

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1 attempt to avoid liability in civil lawsuits.

2 35. On May 25, 2009, SPEAR received an email summarizing a plan to begin
3 “remov[ing] sex act pics and coded terms” from Backpage ads. Later that day, C.F.
4 forwarded this email to HYER with the explanatory note that “We do not intend to be a
5 craig[slist] here, just get out the most egregious stuff.”

6 36. On March 8, 2010, C.F. testified in federal court (the United States District
7 Court for the Southern District of Florida) in the criminal trial of a pimp who had used
8 Backpage to post prostitution ads. During his testimony, C.F. acknowledged the defendant
9 had used the email address “Youngpimpin86” when posting the ads. C.F. also
10 acknowledged that the ads described one so-called escort as “five-foot-three, with a small
11 waist and amazing ass you’ll have to see to believe. XL, XL, XL, Lollipop” and described
12 a different so-called escort as “discrete, sincere and extremely naughty. I am the type of
13 girl who absolutely adores a man who understands the many desires of a young beautiful
14 woman and how to accommodate a variety of fantasies.” This episode provided notice to
15 Backpage that it was implausible to pretend such ads were merely offering lawful escort
16 services.

17 37. On September 1, 2010, PADILLA sent an email to HYER and C.F. stating
18 that customers who engaged in “extreme and repeat” violations of Backpage’s posting rules
19 would have their ads deleted and be banned from the website. However, PADILLA also
20 stated the bans would only be temporary and that “we’ll do everything we can to affect
21 only the worst apples.”

22 38. On September 1, 2010, SPEAR received an email acknowledging that
23 Backpage’s moderators were being instructed to “Remove any sex act pics in escorts [ads]”
24 and “Remove any illegal text in escorts [ads] to include any code words for sex act for
25 money.”

26 39. On September 21, 2010, a group of state attorneys general wrote a letter to
27 Backpage. This letter observed that “ads for prostitution—including ads trafficking
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1 children—are rampant on the site” and argued that “[b]ecause Backpage cannot, or will
2 not, adequately screen these ads, it should stop accepting them altogether.” The letter
3 acknowledged that this step would cause Backpage to “lose the considerable revenue
4 generated by the adult services ads” but stated that “no amount of money can justify the
5 scourge of illegal prostitution, and the misery of the women and children who will continue
6 to be victimized, in the marketplace provided by backpage.”

7 40. On September 25, 2010, C.F. wrote an email explaining that Backpage was
8 unwilling to delete ads that included terms indicative of prostitution because doing so
9 would “piss[] off a lot of users who will migrate elsewhere” and force Backpage to refund
10 those customers’ fees. Thus, C.F. announced that Backpage would “go back to having our
11 moderators remove bad content in a post”

12 41. On September 30, 2010, C.F. testified in federal court (the United States
13 District Court for the District of Minnesota) in the criminal trial of a pimp who had used
14 Backpage to post prostitution ads. During his testimony, C.F. acknowledged that
15 Backpage’s servers are located in Arizona and that the ads posted by the Minnesota-based
16 defendant had therefore “traveled across state lines.”

17 42. On October 8, 2010, PADILLA sent an email (on which VAUGHT was cc’d)
18 threatening to fire any Backpage employee who acknowledged, in writing, that a customer
19 was a prostitute: “Leaving notes on our site that imply that we’re aware of prostitution, or
20 in any position to define it, is enough to lose your job over. . . . This isn’t open for
21 discussion. If you don’t agree with what I’m saying completely, you need to find another
22 job.”

23 43. On October 16, 2010, PADILLA sent an email to a large group of Backpage
24 employees (including HYER and VAUGHT). The email had two attachments that
25 provided guidance on how to “moderate” ads. The first was a Powerpoint presentation that
26 displayed a series of 38 nude and partially-nude photographs, some of which depicted
27 graphic sex acts. Next to each picture was an instruction as to whether it should be
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1 approved or disapproved by a Backpage moderator. These instructions included "Approve.
2 Nude rear shots are okay as long the model is not exposing her anus or genitalia." and
3 "Approve. Rear shot okay. Transparent wet panties okay." The second was an Excel
4 spreadsheet identifying 50 terms (all of which were indicative of prostitution) that should
5 be "stripped" from ads before publication. PADILLA concluded the email by stating:
6 "[I]t's the language in ads that's really killing us with the Attorneys General. Images are
7 almost an afterthought to them."

8 44. On October 16, 2010, PADILLA sent a separate internal email (which also
9 included HYER and VAUGHT as recipients). In this email, PADILLA explained that "I'd
10 like to still avoid Deleting ads when possible," that "we're still allowing phrases with
11 nuance," and that "[i]n the case of lesser violations, editing should be sufficient."

12 45. On October 25, 2010, C.F. sent an email to SPEAR, HYER, and PADILLA
13 acknowledging that the "[i]llegal content removed" through Backpage's moderation
14 processes was "usually money for sex act." This email also explained that, after the "sex
15 act pics are removed," the "ad text may stay."

16 46. On October 26, 2010, HYER and PADILLA received an email explaining:
17 "We will not remove ads with vaginas or penis showing, just the images unless they are a
18 frequent offender. We will not remove ads with rates under an hour, just the text with the
19 minimum rates. Users need time to react to this change."

20 47. On October 27, 2010, PADILLA sent an email to the head of a group of
21 contractors from India who had been hired to moderate Backpage's adult ads. In this email,
22 PADILLA criticized the contractors for deleting too many ads, stated that this approach
23 was bad for business, and instructed the contractors to simply edit the ads to remove the
24 more-obvious language: "As long as your crew is editing and not removing the ad entirely,
25 we shouldn't upset too many users. Your crew has permission to edit out text violations
26 and images and then approve the ad."

27 48. On October 27, 2010, HYER sent an internal email stating that Backpage
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1 was "editing 70 to 80%" of the ads it received from customers. In other words, HYER
2 acknowledged that a large proportion of the ads originally submitted by Backpage's
3 customers contained text and pictures that were indicative of prostitution and that
4 Backpage was still choosing to publish those ads after editing them.

5 49. On November 4, 2010, C.F. sent an email to Backpage's India-based
6 moderators (on which PADILLA was cc'd) explaining that "[m]any of the ads need to have
7 15 minute and 30 minute pricing removed" and that "I'm being evaluated by lawyers [*i.e.*,
8 state attorneys general] later this week so cleaning up old stuff is important."

9 50. On November 17, 2010, HYER and PADILLA received an email
10 acknowledging that the term Lolita is "code for under aged girl" but explaining that this
11 term could simply be stripped out from ads (as opposed to refusing to publish the ad). The
12 email also explained that customers should be allowed to include their identification
13 numbers from a notorious prostitution website, The Erotic Review: "[A]llow users to put
14 in TER IDs (just no live links)."

15 51. On November 30, 2010, LARKIN, SPEAR, and other Backpage
16 representatives participated in a conference call with representatives from NCMEC.
17 During this call, the Backpage representatives were advised that a large portion of the ads
18 on Backpage were blatant prostitution ads, that many of those ads featured children, and
19 that the posting of such ads was illegal in every state.

20 52. In December 2010, HYER, PADILLA, and others exchanged a series of
21 emails entitled "Deep cleaning strip out." These emails identified a lengthy list of terms
22 that were indicative of prostitution and discussed plans for removing the terms from the
23 old ads in Backpage's archives. During this exchange, C.F. stated that Backpage wasn't
24 willing to delete the old prostitution ads because "our users love" having access them,
25 "[s]o, best to do deep cleaning and not kill a valuable feature." C.F. later encouraged
26 Backpage's staff to complete the project quickly to avoid scrutiny: "This task is urgent
27 since CNN is runing [*sic*] a report soon."

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1 53. On January 13, 2011, HYER and PADILLA received an email summarizing
2 instructions that had been provided to members of Backpage's technical staff. It explained
3 that the technical staff had been instructed "not to display the moderation log" in a
4 particular section of Backpage's database "since we pdf this page for subpoenas. I would
5 rather not testify in court as to why my staff 'approved' . . . postings."

6 54. In January 2011, LARKIN and LACEY met with a representative from
7 NCMEC. During this meeting, LACEY asked which types of sex ads would be acceptable
8 from NCMEC's perspective. When the NCMEC representative declined to say that any
9 such ads would be acceptable, LACEY made a statement to the effect of "adult prostitution
10 is none of your business."

11 55. On January 31, 2011, and February 1, 2011, C.F. engaged in an email
12 exchange concerning whether to remove links to other prostitution websites (such as The
13 Erotic Review) from expired Backpage ads. C.F. stated that, although SPEAR and his
14 "internet safety guy" were recommending that such ads be removed, he thought this would
15 "be a stupid move" because it would hurt Backpage financially (by reducing the number
16 of referrals from other sites). C.F. added that "this overly zealous focus on moderation at
17 the expense of other development is a lot of bullshit"

18 56. On February 2, 2011, C.F. sent an email acknowledging that "[t]he strip out
19 affects almost every adult ad." In other words, C.F. acknowledged that "almost every adult
20 ad" on Backpage was a prostitution ad that had been edited to remove the most damning
21 text and pictures.

22 57. On February 3, 2011, a Backpage customer who went by the name "Licks
23 Alot" wrote an email to Backpage complaining that all of the pictures in one of her ads
24 (entitled "Athletic SWF Guaranteed Low Mileage Boys!!!") had been deleted. C.F.
25 responded to "Licks Alot" by explaining that one of her photos had been removed because
26 "[o]ur crazy internet safety experts do not want any genitalia showing up around the
27 thong." However, C.F. proceeded to apologize to "Licks Alot" over the removal of her
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1 remaining photos, allowed her ad (which was obviously for prostitution) to remain on the
2 website, and offered her a free upgrade.

3 58. On February 8, 2011, C.F. testified in federal court (the United States District
4 Court for the Middle District of Florida) in the criminal trial of a pimp who had used
5 Backpage to post prostitution ads. During his testimony, C.F. authenticated one of the ads
6 the defendant had placed on Backpage, whose title was "Extra horny sexy newbie,"
7 confirmed that Backpage had allowed this ad to be posted multiple times in various East
8 Coast cities, and acknowledged that Backpage published "a lot" of similar ads. This
9 episode provided further notice to Backpage that it was implausible to pretend such ads
10 were merely offering lawful escort services.

11 59. On February 16, 2011, PADILLA sent an email to Backpage's India-based
12 moderators (on which VAUGHT was cc'd) explaining that Backpage was adopting a
13 "more lenient policy" and that he was instructing his Phoenix-based employees to "go easy
14 on some types of violations." PADILLA acknowledged this approach would "likely" result
15 in more "violations" but emphasized that "moderators should err on the side of the user."

16 60. On February 16, 2011, PADILLA sent a separate email discussing whether
17 several terms should remain on Backpage's "filtered terms" list. During this discussion,
18 PADILLA acknowledged—by placing quote marks around the term "companionship"—
19 that he didn't actually believe the women being advertised on Backpage were providing
20 lawful escort services: "[The term] implies some exchange of bodily fluids which kills our
21 'companionship' argument, but i don't think we've ever really gotten in trouble for it."

22 61. On February 22, 2011, PADILLA received an email requesting Backpage's
23 "list of banned, stripped out adult terms." In response, PADILLA sent an Excel
24 spreadsheet entitled "Phrase List 02211," which PADILLA described as "the latest greatest
25 version of the list." The enclosed spreadsheet identified over 660 words or phrases that are
26 indicative of prostitution, including an array of terms that are suggestive of child
27 prostitution (e.g., "lolita," "fresh," "high school," "tight," "young"). The spreadsheet
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1 explained that most such terms were simply to be “filtered” from the ads in which they
2 appeared.

3 62. On February 23, 2011, PADILLA received an email concerning a particular
4 ad that had recently been edited by Backpage’s India-based moderators. The ad was
5 obviously for prostitution—its title was “new-new-new-put me in your favorite position”
6 and the poster had attempted to include two photographs that violated Backpage’s posting
7 rules. In response, the India-based moderators had deleted both of those photos, as well as
8 a third photo that depicted the prostitute’s face, and then allowed the ad to be published.
9 The email received by PADILLA did not criticize the moderators for allowing an obvious
10 prostitution ad to be published after editing. To the contrary, it emphasized that the ad
11 should remain on Backpage and criticized the moderators for removing the third photo,
12 threatening to fire them if they did it again: “2 out of 3 pics should have been removed.
13 But [the] moderator deleted all three pics. This is plain wrong I would fire a moderator
14 in Phoenix if they did this.”

15 63. In March 2011, LARKIN, LACEY, SPEAR, and other Backpage
16 representatives met with representatives from NCMEC. During this meeting, the Backpage
17 representatives were again advised that a large portion of the ads on Backpage were blatant
18 prostitution ads. The Backpage representatives also were advised they could be criminally
19 prosecuted under federal law for their conduct.

20 64. On April 5, 2011, PADILLA sent an email whose recipients included
21 VAUGHT and the supervisor of Backpage’s Indian moderation team. The email was
22 entitled “relaxed image standards” and included, as an attachment, a document that
23 displayed a series of 30 nude and partially-nude photographs. Next to each picture was an
24 instruction as to whether it should be approved or disapproved by a moderator. One picture
25 showed a woman sitting on a bed, wearing only a bra and panties, with her legs spread
26 open and her hand partially covering her crotch. The caption provided in part: “okay –
27 but barely.”
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1 65. Between April 2011 and March 2012, PADILLA, C.F., and others
2 participated in an email exchange acknowledging that Backpage was deleting thousands of
3 pictures from customer ads each week and seeking assistance in collecting all of the deleted
4 pictures so they could be used for “entertainment” or to generate user “traffic for other
5 projects.” The email explained that the deleted pictures could be made available to the
6 public on a new website called “nakedpics.backpage.com” or “badpics.backpage.com.”

7 66. On April 19, 2011, LARKIN and SPEAR received an email seeking
8 permission to terminate the contract of a third-party vendor that had been receiving \$17,000
9 per month to “remov[e] any nude pics” from the expired ads in Backpage’s database.
10 LARKIN responded: “do it!”

11 67. On June 7, 2011, C.F. received an inquiry from a law enforcement official
12 about a particular ad that included the term “amber alert.” In response, C.F. acknowledged
13 this might be “some kind of bizarre new code word for an under aged person.” C.F. then
14 forwarded this exchange to PADILLA and stated that he had instructed HYER to add
15 “amber alert” to Backpage’s “strip out” list. In other words, HYER, PADILLA, and C.F.
16 did not require all future ads involving this particular coded term for the prostitution of a
17 child to be blocked from Backpage—they merely required such ads to be edited before
18 publication.

19 68. On June 30, 2011, several Backpage representatives met with representatives
20 from the office of the Washington State Attorney General. During this meeting, the
21 Backpage representatives initially attempted to claim that no prostitution ads appeared on
22 their website. In response, a representative from the Attorney General’s office stated:
23 “You mean to tell me that if someone responded to an advertisement, the woman they
24 called for services would be offering to go out for coffee?” A Backpage representative
25 responded to this question by looking at C.F., laughing, and acknowledging that Backpage
26 couldn’t “deny the undeniable.”

27 69. On July 27, 2011, C.F. sent an email to HYER and PADILLA, and a nearly-
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1 identical email to LARKIN and LACEY, concerning the possibility of using age-
2 verification software. In this email, C.F. acknowledged the software might be beneficial
3 ("This might be our solution") but recommended against its wholesale adoption because it
4 would cost "79 to 99 cents per query" and would thus cut into Backpage's profits.

5 70. On July 28, 2011, LACEY sent LARKIN a draft editorial entitled "BackPage
6 understood." In this document, LACEY bragged about Backpage's contributions to the
7 prostitution industry: "Backpage is part of the solution. Eliminating our adult advertising
8 will in no way eliminate or even reduce the incidence of prostitution in this country. . . .
9 For the very first time, the oldest profession in the world has transparency, record keeping
10 and safeguards." LACEY also acknowledged that Backpage used an automatic filter to
11 remove particular phrases from ads that were indicative of prostitution but still published
12 the ads after editing them.

13 71. Soon afterward, LARKIN forwarded the editorial to C.F., with a cover note
14 cautioning against some of LACEY's statements "being made public" because "we need
15 to stay away from the very idea of 'editing' the posts, as you know." C.F., in turn, revised
16 the editorial to take out the paragraph lauding Backpage's contributions to the prostitution
17 industry.

18 72. On August 5, 2011, Backpage received a letter from the mayor of Seattle.
19 This letter warned that "Seattle Police have identified an alarming number of juvenile
20 prostitutes advertised on Backpage.com since January 2010" and explained that Backpage
21 was dissimilar from other companies whose products and services are "occasionally or
22 incidentally" utilized by criminals because "[y]our company is in the business of selling
23 sex ads" and "your services are a direct vehicle for prostitution." The letter also
24 recommended that Backpage require in-person age verification for all of the "escorts"
25 depicted in its ads. Afterward, Backpage declined to adopt these recommendations.

26 73. On August 15, 2011, PADILLA received an email containing an updated
27 version of Backpage's moderation guidelines. This six-page document provided the
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1 following instructions concerning photographs: "Nude rear shots are okay as long the
2 model is not exposing her anus or genitalia," "Transparent wet panties okay should not be
3 able to see personal private part," and "cherry, Ice-cream keeping in mouth [is okay]." The
4 document also explained that "Bikini, lingerie, g-string, thong, and hands covering nipples
5 are all allowed," "Hourly rates are OK," and "Sessions are okay. E.g \$50 session."

6 74. On August 31, 2011, Backpage received a letter from the National
7 Association of Attorneys General. This letter characterized Backpage as "a hub" for
8 human trafficking, identified "more than 50 instances, in 22 states over three years, of
9 charges filed against those trafficking or attempting to traffic minors on Backpage.com,"
10 and noted that "[n]early naked persons in provocative positions are pictured in nearly every
11 adult services advertisement on Backpage.com and the site requires advertisements for
12 escorts, and other similar 'services,' to include hourly rates. It does not require forensic
13 training to understand that these advertisements are for prostitution."

14 75. On October 6, 2011, C.F. sent an email discussing various proposals for
15 addressing "the under aged issue." With respect to one particular proposal, C.F.
16 acknowledged it was a good one but recommended against adopting it because Backpage
17 would not derive any public-relations benefit from doing so: "This is a good idea but it is
18 not visible to AG's [state attorneys general] so it has little PR value. It is a low priority."

19 76. In the fall of 2011, Backpage sought the assistance of a public relations firm
20 based in Washington, D.C. On October 12, 2011, C.F. received a written copy of the firm's
21 presentation. Later, some of the BACKPAGE DEFENDANTS attended a meeting at
22 which the presentation was discussed in more detail. The presentation warned that
23 Backpage's business practices would inevitably result in legal trouble ("One day the
24 proverbial is going to hit the fan") and characterized Backpage's "media strategy" as "Do
25 not acknowledge the prostitution." The presentation also noted that the "ads on the
26 backpage.com site" generally fall into three categories, one of which is "Pimps and Men
27 Looking for Kids."